INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
Statute of the State the validity of which is involved	2
Date of judgment and date of application for appeal	3
Nature of case and rulings below	4
Substantiality of questions involved	6
Cases sustaining the jurisdiction	7
Exhibit "A"—Opinion of the trial court	9
Exhibit "B"—Opinion of the Supreme Court of Florida	12

Table of Cases Cited

Aero Mayflower Tea Co. v. *Georgia Public Service Commission*, 295 U. S. 285	8
Aspen Mining & Smelting Co. v. *Billings*, 150 U. S. 31	3
Hamilton v. *Regents of University of California*, 293 U. S. 245	6
Hartford Steam Boiler Co. v. *Harrison, Insurance Commissioner*, 301 U. S. 459	8
John P. King Manufacturing Co. v. *City Council of Augusta*, 72 L. Ed. 801	7
Senn v. *Tile Layers Protective Union*, 301 U. S. 468	8
Smith v. *Cahoon*, 283 U. S. 553	8
Standard Computing Scale Co. v. *Farrell*, 249 U. S. 571, 63 L. Ed. 780, 39 Sup. Ct. 380	8

Statutes Cited

Bill of Rights of the Constitution of Florida, Section 12	4
Constitution of the United States:	
Fifth Amendment	3, 4
Fourteenth Amendment	3, 4

Page

Judicial Code, Section 237, as amended by the Act of February 13, 1925, Ch. 229, 43 Stat. at Large 936, 28 U. S. C. 344 7
Ordinances Nos. 156.01 and 156.02 of the City of Fort Lauderdale 2
United States Code, Title 28:
Section 344 ..... 1, 8
Section 350 3
Section 861a 2

SUPREME COURT OF FLORIDA

STATE OF FLORIDA, EX REL. WILLIAM LEWIS,
Appellant,

vs.

ROLAND R. KELLEY, AS CHIEF OF POLICE OF THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA,
Respondent and Appellee

STATEMENT IN SUPPORT OF JURISDICTION

The appellant, William Lewis, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully represents:

A

Statutory Provisions Sustaining Jurisdiction

The statutory provision which sustains the jurisdiction of the Supreme Court of the United States is Section 344(a) of Title 28 of the United States Code, reading, to the extent relevant here, as follows:

> "Sec. 344(a). Final judgment or decree in any suit in the highest court of a State in which a decision could be had * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

The remedy by writ of error under the foregoing section has been abolished and an appeal substituted in its place by Section 861(a) of Title 28 of the United States Code.

B

Statutes of the State the Validity of Which Is Involved

The statutes of the State of Florida, the validity of which has been sustained by a final decree of the Supreme Court of the State of Florida, the highest court of said state, as not being violative of or repugnant to the Constitution and laws of the United States, are Ordinances 156.01 and 156.02 of the City of Fort Lauderdale, Broward County, Florida, a municipal corporation and subdivision of the State of Florida. (Said sections of said ordinances are set out in full in Petition for Appeal filed herein). The pertinent provisions thereof are:

> "Sec. 156.01. "It shall be unlawful for any person in the City of Fort Lauderdale • • • to have in his possession tickets commonly or customarily used as lottery tickets • • • whether for lottery yet to be played or one that has heretofore been played."
>
> "Sec. 156.02. "Tickets • • • found in possession of any person in the City of Fort Lauderdale shall be prima facie evidence that said person is engaging in, participating in or connected with a lottery scheme or device, or has recently engaged in, participated in or has been connected with a lottery scheme or device, and such person shall be guilty of possession of devices and things used in a lottery as prohibited by the provisions of Sec. 156.01, and such possession raises a presumption that the lottery is yet to be played, or has recently been played, but such presumption may be overcome by proof."

The docket charge against appellant in the Municipal Court of the City of Fort Lauderdale, upon which appellant

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was put to trial and convicted and sentenced to pay a fine of $500.00 and to serve 30 days in jail, was as follows:

> "CHARGE: On the 22nd day of March, 1947, did have in his possession lottery tickets within the corporate limits of the City of Fort Lauderdale, Florida, in violation of Sec. 156.01 of the Code of Ordinances of said City."

The foregoing sections of said ordinances are believed to conflict with Section 1 of the Fourteenth Amendment and Fifth Amendment to the Constitution of the United States and as applied to appellant's conviction and sentence to imprisoment and to pay a fine.

C

Date of Judgment and Date of Application for Appeal

The date of the final decree of the Supreme Court of the State of Florida, which is now sought to be reviewed, was October 28th, 1947.

Appellant's motion for a rehearing was denied on November 24th, 1947.

The time for taking the appeal began to run on the date of the denial of said motion for rehearing, to wit, Nov. 24, 1947.

Aspen Mining & Smelting Co. v. *Billings,* 150 U. S. 31.

The date on which the application for appeal was presented and the appeal allowed was Nov. 25, 1947.

Under the provisions of Section 350 of Title 28 of the United States Code, the appellant may bring his appeal within three months after the entry of the decree of the Supreme Court of the State of Florida.

D

Nature of Case and Rulings Below

On March 24, 1947, appellant was arrested and arraigned before the Municipal Court in the City of Fort Lauderdale, Broward County, Florida, and sentenced to pay a fine of $500.00 and serve 30 days in jail (R. 7).

Upon being arraigned, appellant filed his written motion to quash the docket charge, in which, among other things, he set out that said sections of said ordinances were arbitrary, capricious, unreasonable, unconstitutional, null and void, and violated Section 1 of the Fourteenth Amendment and Fifth Amendment to the Constitution of the United States and Section 12 of the Bill of Rights of the Constitution of Florida, which motion was by said municipal court over-ruled and denied (R. 4-6).

On March 26, 1947, appellant filed his petition for writ of habeas corpus in the Circuit Court of the Fifteenth Judicial Circuit, in and for Broward County, Florida (R. 1-4).

On May 29, 1947, a hearing was had before the Circuit Judge, in and for Broward County, Florida, on appellant's petition for writ of habeas corpus, return of respondent Roland R. Kelley, as Chief of Police of the City of Fort Lauderdale, and petitioner's answer to said response, at which time the Circuit Judge entered an order, in substance as follows:

(a) That the docket charge was sufficient.

(b) "Both attorneys for the petitioner and the city have requested the court to rule upon the attacks made upon Sections 156.01 and 156.02 of the ordinance of the City, and in response to that request I will give my views thereon * * * Section 201 of the Charter of the said city makes all general laws of the State applicable to the municipality, and further provides that the act shall not be construed as limiting the power of the City

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Commission to enact any ordinance or resolution not in conflict with the Constitution of this state or with the expressed provisions of this act. The petitioner has not made it to appear that either of the sections of the code complained of is in conflict with the Constitution of the State of Florida. If not in conflict with the Constitution, the City under this general power was clothed with authority to enact the ordinances in question."

(c) "As to the contention that the provisions of Sec. 156.02 to the effect that the possession of a lottery ticket is prima facie evidence of the guilt of the defendant, there are many statutes on our books which provide that possession of stolen goods or illegal liquors, etc., is prima facie evidence of guilt and have been upheld by the courts of this state in numerous cases. All that has just been said is sufficient as an answer to the third contention in regard to the presumption of innocence" (R. 34-37).

Thereupon, the appellant appealed from the order of the Circuit Court of the Fifteenth Judicial Circuit to the Supreme Court of the State of Florida (R. 39).

On May 31, 1947, the Circuit Judge entered a supersedeas order upon motion of appellant for the entry of an order that the cash supersedeas bond from the Municipal Court to the Circuit Court, in the amount of $1000.00 deposited as a supersedeas pending appeal, be held and ordered as a stay or supersedeas bond upon the appeal from the Circuit Court to the Supreme Court of the State of Florida, and in which order of said Circuit Judge it was ordered that the appellant, in addition to the $1000.00 cash bond deposited with the City officials of the City of Fort Lauderdale, give a supersedeas bond in the sum of $1000.00 until a final determination of this cause, conditioned that appellant should diligently prosecute his said appeal and, in the event that said appeal be dismissed or the said judgment and sentence be affirmed, be personally forthcoming to

answer and abide by the final order, sentence or judgment which may be passed in the premises by the Appellate Court (R. 38, 39).

This supersedeas bond in the amount of $1000.00 was executed by appellant with the surety company, as shown by certificate of the Clerk of the Circuit Court presented and filed herein with this Court.

On appeal to the Supreme Court of the State of Florida, said Supreme Court on October 28th, 1947, affirmed the judgment of the Circuit Court, in and for Broward County, Florida.

The Supreme Court of Florida on Nov. 24th, 1947, denied appellant's petition for rehearing.

E

Substantiality of Questions Involved

The appellant respectfully represents that the questions involved in his appeal to the Supreme Court of the United States are of a substantial nature. It is well established that an appeal will not be dismissed for want of a substantial Federal question, unless the contentions of the appellant are "clearly not debatable and utterly lacking in merit." *Hamilton* v. *Regents of University of California*, 293 U. S. 245, 258.

The issue raised by appellant's contention is that the municipal ordinance herein questioned violates the equal protection clause of Section 1 of the Fourteenth Amendment and Fifth Amendment to the Constitution of the United States and Section 12 of the Bill of Rights of the Constitution of the State of Florida.

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F

Cases Sustaining the Jurisdiction

The contention raised by appellant is that said municipal ordinance is within the jurisdiction of the Supreme Court of the United States to review his appeal, judgments or decrees of State courts of last resort, as defined by Section 237(a) of the Judicial Code, as set forth in the Amendatory Act of February 13, 1925, Chap. 229, 43 Stat. at Large 936, U. S. C. Title 28, Section 344.

1. In the case of *John P. King Manufacturing Company, Plff. in Err.* v. *City Council of Augusta and William B. Bell, Mayor, etc.*, reported in 72 L. Ed. 801, the Supreme Court held:

> "It of course rests with each State to determine in what form and by what agencies its legislative power may be exerted. It may legislate little or much in its constitution, may permit the electorate to make laws by direct vote, may entrust its legislature with wide lawmaking functions and may delegate legislative authority to subordinate agencies, such as municipal councils and State commissions.
>
> But whether this power be exerted in one form or another, or by one agency or another, the enactments put forth, whether called constitutional provisions, laws, ordinances or orders, are in essence legislative acts of the State; they express its will and have no force otherwise. As respects their validity under the Constitution of the United States all are on the same plane. If they contravene the restraints which that instrument places on the legislative power of a State they are invalid, no matter what their form or by what agency put forth; for, as this court has said, the protection which these restraints afford applies, 'whatever the form in which the legislative power of the State is exerted; that is, whether it be by a constitution, an act of the legislature, or an act of any subordinate instru-

mentality of the State exercising delegated legislative authority, like an ordinance of a municipality or an order of a commission.' *Standard Computing Scale Co.* v. *Farrell*, 249 U. S. 571, 577, 63 L. Ed. 780, 782, 39 Sup. Ct. Rep. 380."

2. Jurisdiction to entertain an appeal from the decision of a State court on the ground that a State statute violates an "equal protection" clause of the Fourteenth Amendment to the Constitution of the United States. *Smith* v. *Cahoon*, 283 U. S. 553; *Aero Mayflower Tea Co.* v. *Georgia Public Service Commission*, 295 U. S. 285; *Hartford Steam Boiler Co.* v. *Harrison, Insurance Commissioner*, 301 U. S. 459; *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 476.

Therefore, the appellant, William Lewis, respectfully submits that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 344(a) of Title 28 of the United States Code.

Respectfully submitted,

J. Lewis Hall,
Halley B. Lewis,
Thos. M. Lockhart,
Counsel for Appellant.

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The Trial Court below filed its order, judgment or decree quash Writ of Habeas Corpus and remanding the petition of the custody of the Chief of Police on May 29th, 1947 as follows: (Tr. 34-37).

EXHIBIT "A"

(Caption Omitted)

This cause is before the Court on writ of habeas corpus, the response thereto, and the answer of the Petitioner to the said response.

By this writ Petitioner seeks to be discharged from the judgment and sentence of the Municipal Court of the City of Fort Lauderdale, said sentence being to pay a fine of Five Hundred ($500.00) Dollars and to serve thirty (30) days in jail.

Petitioner alleges that he was convicted and sentenced under Section 156.01 (C-338) of the Code of Ordinances of said City. Attached to the petition as Exhibit "A" is what purports to be a motion to quash the docket charge upon which it is alleged the petitioner was tried. The said docket charge is as follows:

> "On 22nd day of March, did have in his possession lottery tickets within the corporate limits of the City of Fort Lauderdale, Florida, in violation of Section 156.01 (B 558) of the Code of Ordinances of said City."

The record fails to show whether or not the docket charge was predicated upon an affidavit. The motion to quash contains practically the same grounds as are set up in the petition for writ of habeas corpus.

It is the contention of the Petitioner that Section 156.01 and Section 156.02 is in conflict with the law of the State of Florida and is unconstitutional and void by reason of,

1. The City was without authority to pass said ordinances.
2. Said ordinances are contrary and repugnant to the Statutes of Florida.
3. Said ordinances provide a course of legal proceedings contrary to the rules and principles established.

4. The docket charge does not charge any offense.
5. The ordinances do not describe a bolita ticket.
6. Said ordinances provide that possession of a lottery ticket is prima facie evidence of engaging in a lottery.
7. Said ordinances make it unconstitutional to possess a lottery ticket yet to be played or one heretofore played.
8. Said ordinances deny to petitioner the right to the presumption of innocence in accordance with established principles of law.

Grounds 9, 10 and 11 repeat in different language other grounds heretofore recited.

It is alleged that the motion to quash the docket charge was denied by the Municipal Judge. In the argument before the Court and the brief filed by the petitioner it is contended that the docket charge upon which the defendant was tried was fatally defective in that it failed to recite that the lottery tickets found in the possession of the defendant were for a lottery not yet played.

It is my conclusion that the said docket charge is sufficient. Trials in a Municipal Court are more informal than in higher Courts and indictments or informations are not usually required. Then, too, the defendant filed no motion for a bill of particulars to which he had a right if he deemed this fact to be necessary. The evidence submitted at the trial is not before this Court and the Court will presume that the Trial Judge had sufficient legal evidence to support the charge made. The above finding is sufficient to quash the writ of habeas corpus and remand the petitioner to the custody of the Chief of Police. But, both the attorney for the Petitioner and the City Attorney have requested the Court to rule upon the attacks made upon Sections 156.01 and 156.02 of the ordinances of said City and in response to that request I will give my views thereon.

The attacks made upon the said ordinances may be grouped under three grounds:

1. The Charter of the City failed to authorize the passage of the said ordinance containing the provisions complained of.

2. That the provisions complained of in said ordinances are unconstitutional and void.

3. That Section 156.02 provides that possession of a lottery ticket is prima facie evidence of guilt and that said provision is unconstitutional.

Section 201 of the Charter of the said City makes all general laws of the State applicable to the municipality and further provides that the Act shall not be construed as "limiting the power of the City Commission to enact any ordinance or resolution not in conflict with the constitution of this State, or with the express provisions of this Act." Petitioner has not made it to appear that either of the sections of the code complained of are in conflict with the constitution of the State of Florida. If not in conflict with the constitution the City under this general power was clothed with authority to enact the ordinances in question.

As to the contention that the provisions of Section 156.02 to the effect that the possession of a lottery ticket is prima facie evidence of the guilt of the defendant, there are many statutes on our books which provide that possession of stolen goods or illegal liquors, etc., are prima facie evidence of guilt and have been upheld by the Courts of this State in numerous cases. All that has just been said is sufficient as an answer to the third contention in regard to the presumption of innocence.

For the reasons stated the writ of habeas corpus should be quashed and the petitioner remanded to the custody of the Chief of Police.

Thereupon, it is ordered and adjudged that the said writ of habeas corpus be, and the same is hereby, quashed and the petitioner, William Lewis, be, and he is hereby, remanded to the custody of the Chief of Police to serve the sentence imposed by the City Judge.

Done and ordered in Chambers this May 29, 1947.

GEORGE W. TEDDER,
Circuit Judge.

EXHIBIT "B"

Judgment and decree of the Supreme Court of Florida dated October 28th, 1947 as follows:

IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D., 1947

EN BANC

STATE OF FLORIDA, ex rel., WILLIAM LEWIS, *Appellant*,

vs.

ROLAND R. KELLEY, Chief of Police of the City of Fort Lauderdale, Appellee

Opinion filed October 28, 1947.

An Appeal from the Circuit Court for Broward County, George W. Tedder, Judge.

Davis & Lockhart and J. Lewis Hall, for Appellant.

Julian E. Ross, for Appellee.

Per CURIAM:

Affirmed.

Thomas, C. J., Terrell, Buford, Chapman, Sebring and Barns, J. J., Concur.

Judgment and decree of the Supreme Court dated November 24th, 1947 denying petition of appellant for rehearing as follows:

IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D. 1947

Monday, November 24, A. D. 1947.

Broward County

STATE OF FLORIDA, ex rel., WILLIAM LEWIS, *Appellant*,

vs.

ROLAND R. KELLEY, Chief of Police of the City of Fort Lauderdale, Appellee

Counsel for Appellant having filed in this cause Petition for Rehearing and having been duly considered, it is ordered by the Court that said Petition be and the same is hereby denied.

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JANUARY 19, 1948.

Per Curiam Decision.

No. 501. FLORIDA EX REL. LEWIS *v.* KELLEY, CHIEF OF POLICE. Appeal from the Supreme Court of Florida. *Per Curiam:* The appeal is dismissed for want of a substantial federal question. *Thomas M. Lockhart* for appellant. *Thomas O. Berryhill* for appellee. Reported below: 159 Fla. 562, 32 So. 2d 464.